IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL.

Writ Petition No. 38 of 2007 (S/B)

Nanda Ballabh Pathak aged about 56 years
S/o Sri Hira Ballabh Pathak,
Presently posted as District Audit Officer
(Cooperative and Panchayat) Bageshwar …….. Petitioner

Versus

1. State of Uttarakhand through
its Secretary, Finance, Civil Secretariat,
Dehradun.
2. Director of Treasury and finance,
23 Laxmi Road, Dalanwala,
Dehradun …….. Respondents

……..

Sri Anil Kumar Joshi, Advocate for the petitioner.
Sri N.B. Tiwari, Chief Standing Counsel for the respondents.

JUDGMENT

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble J.C.S.Rawat, J.

RAJEEV GUPTA, C.J. (Oral)

Sri Anil Kumar Joshi, Advocate for the petitioner.

Sri N.B. Tiwari, Chief Standing Counsel for the respondents.

They are heard on admission.

2. Petitioner Nanda Ballabh Pathak has filed this writ petition for the following reliefs:

"A. Issue a writ of certiorari quashing the impugned order dated 26.02.2007 passed by respondent no. 2 and contained as Annexure no. 1 to this writ petition.

B. Any other writ, order or direction, which this Hon'ble Court may deem fit and proper in the circumstances of the case may also be passed.

C. Allow the writ petition with cost."

3. The petitioner, in substance, is challenging his transfer vide impugned order dated 26.02.2007 (Annexure No. 1).

4. The Apex Court in the case of **Union of India and others Vs. S.L.Abbas** reported in **1993 4 SCC 357** outlining the scope of interference in the matter of transfer observed in paras 6 and 7:

> "6. An order of transfer is an incident of Government service. Fundamental Rule 11 says that "the whole time of a Government servant is at the disposal of the Government which pays him and he may be employed in any manner required by proper authority". Fundamental Rule 15 says that "the President may transfer a Government servant from one post to another". That the respondent is liable to transfer anywhere in India is not in dispute. It is not the case of the respondent that the order of his transfer is vitiated by mala fides on the part of the authority making the order, ---- though the Tribunal does say so merely because certain guidelines issued by the Central Government are not followed, with which finding we shall deal later. The respondent attributed "mischief" to his immediate superior who had nothing to do with his transfer. All he says is that he should not be transferred because his wife is working at Shillong, his children are studying there and also because his health had suffered a setback some time ago. He relies upon certain executive instructions issued by the Government in that behalf. Those instructions are in the nature of guidelines. They do not have statutory force.
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> 7. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. The guidelines say that as far as possible, husband and wife must be posted at the same place. The said guideline however does not confer upon the Government employee a legally enforceable right."

5. On due consideration of the submissions of the learned counsel for the parties, we do not find any ground for interference in the matter of the petitioner's transfer from Bageshwar to Chamoli after his having remained at his present place of posting for a period of more than two years.

6. The writ petition, therefore, is liable to be dismissed and is hereby dismissed summarily.

(J.C.S.Rawat , J.) **(Rajeev Gupta, C. J.)**
14.03.2007 14.03.2007

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